

MINUTES
CLAY COUNTY BOARD OF ADJUSTMENT
5:30 PM, TUESDAY, APRIL 18, 2017
MEETING ROOM B, CLAY COUNTY COURTHOUSE

Members Present: Chair Amos Baer, Perry Bushaw, Greg Anderson, Paul Krabbenhoft.

Members Absent: Pamela Harper

Others Present: Tim Magnusson, Lynne Spaeth, Jenny Samarzja, Jenny Mongeau, Chris Heyer, Claudia Murray, Frank Schindler, Scot Manthe, Jamie Lewis, Brian Berg, Wade Fenske, Bill Henning, Beverly Henning, Raymond Reading, Michael Raum, Jim Hanson, Jamie Hanson, Mark Klevgaard, Shawn Justesen, Lynn Reading, Jerome Ekre, Karen Hanson, Chris Guida, Paul Wibe, Anna Jean Wibe, Chad Murray, Doug Keeping, Frank Gross, Colin Melby, Marc Bauer.

On motion by Paul Krabbenhoft, seconded by Greg Anderson, and unanimously carried, the Board approved the agenda as corrected. (deleting/withdrawing Western Minnesota Steam Threshers Reunion's Request for Variance).

On motion by Perry Bushaw, seconded by Greg Anderson, and unanimously carried, the Board approved the March 21, 2017 minutes as corrected.

GREAT BASIN INC/NUGGET INVESTMENT LLC-REQUEST FOR VARIANCE

The applicant is seeking approval of a variance to allow a reduction in the required setback for a platted subdivision from a feedlot. The County Code requires a platted subdivision to be located at least one-half mile from a feedlot. The affected property is in the NE Quarter, Section 17, T139N, R45W (Hawley Twp.) in the Agricultural General (AG) zoning districts.

On motion by Greg Anderson, seconded by Perry Bushaw, and unanimously carried, the Board opened the public hearing.

Tim Magnusson presented the power point of the Bison Ridge First Subdivision plat proposal from February's meeting. An aerial photo of the feedlot was shown and Magnusson indicated the lines where the proposed lots would be. He indicated where the Lewis Feedlot is located along the river. He explained that he checked with the feedlot officer on where to draw the lines for the half-mile setback where the feedlot is and not from the actual property line. It affects about 32 ½ acres of the applicant's property and impacts a couple of proposed lots. The applicant provided materials from the University of Minnesota Extension Service indicating there would be a 97% chance the air would be odor free 1,700 feet from the feedlot. The request is to be bring the feedback setback to approximately 1700 feet which would make more property available for the proposed subdivision or a future subdivision. The setback affects only platted subdivisions because of the more concentrated residential usage. It does not apply to single lot subdivisions.

Magnusson stated that the applicant was not present at the February meeting but was in attendance tonight.

He recapped the February meeting, wherein it was discussed how the setback is reciprocal. The feedlot is also required to maintain the one-half a mile setback from a subdivision.

Magnusson reiterated on the expansion of the feedlot and direction of that possible expansion. The Board discussed the reciprocal setback and whether it would be one-half mile or 1,700 feet. Jenny Samarzja stated that using the 1,700 feet reciprocal setback is an argument that could be made and would have to be reviewed.

Hardships and practical difficulties were addressed and discussed. It was explained that the variance only affected a few of the proposed lots and not the entire property, so there is still a recourse to plat the lots.

Samarzja explained the legal standard to be applied. She added, that to grant the variance, the Board would have to find a practical difficulty that is related to the land and that difficulty cannot be an economic-based practical difficulty.

Applicant Raymond Reading was present to answer questions and addressed the Board. Reading stated he would be presenting facts as to why his request for a variance should be granted.

His first fact, he explained, was that he had the University of Minnesota Extension Office prepare an Odors From Feedlots Setback Estimation Tool. They took the information off the permitted feedlot data and came up with 1,700 feet being 97% odor free at that distance (see attached). He indicated his property lies northeast of the feedlot, and commented that most of the winds are northwest prevailing. There is a river system that lies between the two properties, a railway system and a solid vegetation of various trees that act as a solid buffer.

Reading also conducted a field study. He went out to the property on March 29th and waited for the winds to be out of the southwest. He presented a weather data document indicating the wind was 21-25 mph (see attached). He went to the highest and lowest elevation point as well as the closest point of 1,700 feet. All the variables were in place to produce the worst conditions for possible odor and he did not detect any cow or manure odors. Moreover, Reading contacted three non-biased individuals to go to the proposed site and substantiate his data. The three individuals also reported no odor. He combined the technical data from the University of Minnesota and the field study data.

Reading explained that potential buyers would be informed that they would be close to a feedlot and a landfill through land disclosure statements. He went on to explain that the land included in the variance area has no agricultural value. Reading ran the Crop Productivity Indexes with the Web Soil Survey with the NRCS office, and the crop productivity indexes resulted in 51% or less (see attached).

The land owner applied for an aggregate permit and was denied. Reading and the landowner feel this is the best plan to tie in two communities: the Bouton Addition and Henry Estates. Likewise, the approval of the variance would corroborate the County's Comprehensive Plan's need for housing. Reading cited that pursuant to the Comprehensive Plan, the County is short 5,000 homes each year. He feels this would benefit our school systems, create more employment opportunities, and increase our tax base to help the township.

Mike Raum, attorney for the applicant approached the Board. Raum stated that the Statute is incorporated into the County Code. He summarized the three requirements for finding a practical difficulty: 1) That the applicant proposes to use the land in a reasonable manner; 2) That the problem resulting from circumstances unique to the property was not created by the landowner; and 3) That the variance won't alter the essential character or the locality. Economic circumstances alone are not enough. Moreover, Minnesota Supreme Court says you CAN consider economic circumstances, just not solely. Raum addressed the three requirements; 1) The use is reasonable because there are already residences there; 2) The problem is not one the landowner is making, and 3) This is not going to alter the essential character of the land. He stressed there will be homes built, the question is where. He believes the provisions of the statute have been met. Next, Raum addressed the six factors identified by the Minnesota Supreme Court: 1) How substantial the variation is in relation to the rule; 2) The effect it would have on government services; 3) Whether the variance would affect a substantial change in the character of the neighborhood; 4) Whether there is another way to alleviate this difficulty; 5) Whether the landowner created the problem; and 6) Whether allowing the variance serves an interest of justice.

Raum touched on the feedlot expansion topic and stressed three points. First, he feels you cannot do planning based on something someone else might do. Next, he pointed out there is a limit as to how far the feedlot could expand because there is another subdivision that would be affected by the feedlot. Lastly, he explained that even if a smaller plat was approved, there are limits because of houses. Raum stressed the expansion of the feedlot should not be a dispositive issue. He referenced the handout with the overlay stating that within the setback there are already some non-platted residences.

In conclusion, Raum pointed out the Staff Report did not address any of the above factors, only the fact that most of the land can still be subdivided. That is not the standard, the standard is practical difficulty. Raum also disagreed with the setback of 70% in that it is much smaller percentage of 57%.

Kevin Miller, who owns Jimmy's Pizza in Hawley, spoke in favor of the development. He believes it is necessary to bring business to the community and school systems.

Jerome Ekre, who lives west of the Lewis property, referenced and summarized an email he had sent to the Planning Department. Lewis has lived there all his life and the feedlot has operated efficiently for years. He has been within 50 feet of it and has never noticed any odor. Ekre feels a property owner should have the right to do whatever they want to with their property. He has no problem with it and stated that Lewis' could expand in other directions as well.

Wade Fenske is the manager of Builders First Source in Hawley and Detroit Lakes, and he deals with contractors, homeowners and developers. He feels it is a natural progression with people moving into the area and said it is a tremendous opportunity to bring in more people. He thinks the variance meets the criteria and asked the Board to consider it.

Scott Manthe informed the Board that he, too, had looked at the property as a good location to put houses. He feels that Ray has done the research to substantiate the odor being held to a 3% level, and provided reasonable data to support housing. Manthe stressed the potential affect it could have on our school system and businesses. He supports Mr. Ekres comments that the landowner should

be able to use his land as he wants. This seems to be a good use since there are houses on both sides.

Marc Bauer lives in Section 8 in a non-platted area. He said he doesn't know the facts of the 3%, but is a cattle nutritionist and knows what cattle smell like and he imagines it is much more than 3%. Additionally, he doesn't think that platted lots for housing should be within ½ mile of a feedlot. He feels that rule is there for a reason and should be followed. He stressed that the applicant only has estimates. We need to maintain the setback because feedlots have an odor to them. Bauer's final point, was he feels that it changes the essential elements of the area. They are quite small lots they are proposing so that is changing the large lots to smaller lots.

Paul Wibe, lives north of the Lewis' and smells the feedlot. He added that they don't object to it, but they do smell it. He is over ½ mile away and believes it to be more than 3%. He believes the Lewis's should not have to come before the Board when planning to expand and that the ½ mile setback is good rule. The Comprehensive Plan says agriculture is a priority.

Bill Henning lives on 200 St. S. At times, he can smell the feedlot but doesn't object to it. He has lived there for 33 years and it doesn't bother him. Henning stated that the odors are acceptable to him but when people move in and smell the feedlot, they will complain to the Lewis's. He added that planning is based on what can happen. That's what planning is all about, dealing with things before they become problems. The feedlot has existed through generations. Other homes have existed since the 70's, and you cannot compare that to people moving into new lots. Henning mentioned the wetlands area. He is not certain it is wetland and there was some investigation done.

Jamie Lewis, Mark Lewis's wife, approached the board. Mark Lewis was unable to attend due to calving. She agrees you can have people sign any document but if people want to complain, they will. She said sometimes they smell the landfill which is a mile from their house. Her cows will make odor on windy days just as the landfill does. She stressed that the variance was denied last time for a reason.

Chad Murray, who is a neighbor to the west, stated his opposition to the variance. He feels that once a subdivision moves in; the expectations are different. It becomes more urban and the feedlot is going to bother them.

Chris Guida lives northwest of the proposed subdivision. She said she can smell the feedlot while walking and birding in the area. She is not opposed to the smell but is opposed to changing the rules for this situation.

Ann Jean Wibe, who lives in Muscado, said they smell an odor but she is more upset about the idea that they cannot expand their land. It is an agricultural area and farmers should have first right to develop their land.

Chris Heyer, from Moore Engineering approached the Board to clarify the question on wetlands on the site and calculations performed to determine the 58% developable land. He handed out an aerial photo showing the wetlands before and after the variance. He also provided a table for the calculations.

On motion by Paul Krabbenhoft, seconded by Perry Bushaw, and unanimously carried, the Board closed the public hearing.

Discussion was held concerning how the variance would take away opportunity from the Lewis'. Farming is getting harder because of development and it is difficult to get new livestock.

Magnusson interjected with the two goals for the Ag General zoning: 1) Support the long-term protection of agriculture in the County; and 2) Plan land uses and implement standards to minimize land use conflicts.

Magnusson confirmed that his recommendation had not changed since the February meeting. The argument he made was not having a practical difficulty. Magnusson said in his opinion, the setback was put in place for subdivisions because of concentrating individuals, more people could be affected.

It was confirmed that if the variance was denied, it does not "kill" the subdivision, it only limits the plat.

It was mentioned that there have been so many feedlot requests and so many issues with people against them. That is why there is an ordinance in place and this is not a simple variance.

The Board discussed the existing feedlot line and a reciprocal variance request for expanding the feedlot. Magnusson talked to the feedlot officer on measuring the setback. They gave the benefit of the doubt and took it from where the current feedlot is located. He also stated that the permit is issued to the parcel.

On motion by Paul Krabbenhoft, and seconded by Perry Bushaw, unanimously carried, the Board of Adjustment denied Great Basin's request to allow a subdivision (located in the NE Quarter, Section 17, T139N, R45W, Hawley Township) to be located less than one-half a mile from a feedlot for the following reason:

- 1) There is no practical difficulty associated with the request to reduce the required setbacks from a feedlot;**
- 2) The circumstances associated with the development standards and setback are not unique to this property;**
- 3) The proposed variance is not in harmony with the general purpose of the zoning district and intent of the Development Code;**
- 4) The variances would alter the essential character of the locality.**

JAMIE & JIM HANSON – REQUEST FOR VARIANCE

The applicant is seeking approval of a variance that would allow an increase in the residential density allowed within 40 acres. Currently the Development Code allows one residential site within 40 acres. The property affected by this request is in the NW Quarter SW Quarter, Section 25, T137N R46W (Barnesville Twp.) in the Agricultural General (AG), Resource Protection-Aggregate (RP-Agg), and Flood Fringe (FF) zoning districts.

On motion by Greg Anderson, seconded by Paul Krabbenhoft, and unanimously carried, the Board opened the public hearing.

Magnusson presented an aerial photo of the property. He explained that in the Agriculture General zoning, the general standard is one residential site per 40 acres. This 40-acre piece of property contains four residences. The proposal is to create a fifth lot. Magnusson said it should also be considered that we would be creating another residential site in a flood plain. The City of Barnesville does not have an extraterritorial jurisdiction. He showed the location of the floodplain and how it is calculated.

Magnusson indicated that he has not heard anything from the neighbors.

Access points and driveways were discussed. Another access would not be granted by the MNDOT. There would have to be a shared driveway or an easement. The applicant wants to put a modular home on a permanent foundation. Magnusson also shared that the size of the new lot would have to be 1 ½ acres and the proposal is for 2 1/2 acres.

The applicant, Jim Hanson, was present. He explained how the property belongs to his son, Jamie. His proposed plans are for the slab and a modular home with an attached garage. He pointed out on the aerial view photo where the home would be located.

Jamie Hanson approached and stated that he gave permission for his parents to build on his lot so that he can take care of them. He has lived there for 16 ½ years. He also explained the history of the surrounding lots.

Frank Schindler, Chair of Barnesville Township, approached and voiced that it seems like a natural progression. The neighbors are aware of plan and the Township received a letter from the County. He added that the realtor who sold the property is on the Township Board and was made aware of the situation. The Township took no action. Schindler also presented some history on the property. Lastly, he sees no problem with this plan and there is plenty of room for a septic system and a well.

On motion by Greg Anderson, seconded by Paul Krabbenhoft, and unanimously carried, the Board closed the public hearing.

Discussion on permanent foundations, septic systems and flood plain were discussed.

Magnusson said they make provisions for family members to live on the same parcel. Those provisions require the structure to be a mobile home.

On motion by Perry Bushaw, and seconded by Paul Krabbenhoft, unanimously carried, the Board of Adjustment approved the variance for an increase in the residential density allowed within 40 acres for the following reasons:

- 1) **The proposed variance is in harmony with the general purpose of the zoning district and intent of the Development Code;**
- 2) **The circumstances related to this request constitute a “practical difficulty”;**
- 3) **The variance would not alter the essential character of the locality.**

On motion by Paul Krabbenhoft, and seconded by Perry Bushaw, and unanimously carried, the Board of Adjustment approved postponing the review of the Bylaws and Rules of Procedure until the May 16, 2017 meeting.

On motion by Perry Bushaw, and seconded by Greg Anderson, and unanimously carried, the meeting was adjourned at 7:10 p.m.

By: _____
Amos Baer, Chair